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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO.

10/668,708 09/23/2003 John F. Austermann III 9919-002COC 2209

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EXAMINER

HYUN, SOON D

ART UNIT PAPER NUMBER

2616

MAIL DATE DELIVERY MODE

08/06/2007 PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

5

<b>Office Action Summary</b>	<b>Application No.</b> 10/668,708	<b>Applicant(s)</b> AUSTERMANN ET AL.	
	<b>Examiner</b> Soon D. Hyun	<b>Art Unit</b> 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 23 September 2003.
- 2a)  This action is **FINAL**.
- 2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-14 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-14 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a)  All    b)  Some \*    c)  None of:
    - 1.  Certified copies of the priority documents have been received.
    - 2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    - 3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 9/23/2003.
- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5)  Notice of Informal Patent Application
- 6)  Other: \_\_\_\_\_

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-4 and 9-11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 20 of U.S. Patent No. 6,650,622. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 20 of U.S. Patent Number 6,650,622 encompasses the limitations of claims 1-4 of instant application. Moreover, omission of a reference element whose function is not needed would be obvious to one of ordinary skill in the art. It is well settled that the omission of an element and its functions is an obvious expedient if the remaining elements performs the same function as before *In re Karlson*, 163 USPQ 184 (CCPA 1963). Also note *Ex parte Rainu*, 168 USPQ 375 (Bd. App. 1969).

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-5, 11, 13 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by De Bruycker et al (U.S. Patent Number 6,272,219).

Re Claim 1, fig. 1 teaches a central office 100 and includes COT (a receiver); a remote station 200 (a remote module) includes a telephone (a transmitter: not shown) connected to splitter 8, wherein the telephone transmits over low bandwidth signaling data (multi-bit information) a low frequency band (low frequency) over the splitter to the CO receiver wherein the splitter enables the POTS signaling to not disturb normal DSL high frequency application over the same PSTN line (wires in the cable); wherein the COT in the CO detects the POTS signaling (multi-bit information) from the telephone (See col. 1, lines 40 +).

Re Claim 2, refer to Claim 1, wherein the low frequency POTS and high frequency DSL are over the same telephone line.

Re Claim 3, refer to Claim 1, wherein the telephone transmits unique signals to CO for PSTN connection.

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Re Claim 4, refer to Claim 1, wherein the CO monitors for the SS7 signaling (unique signals) and identifies caller and callee information.

Re Claim 5, refer to Claim 1, wherein the high data connection is connected to a PC.

Re Claim 11, refer to Claim 1, POTS rate can be configured about 1% of the DSL data rate (high frequency data communication).

Re Claim 13, refer to Claim 1, wherein the remote supports Ethernet.

Re Claim 14, refer to Claim 1, wherein the DSL rate can be configured about 10 Mbps and not more than 100 Kbps.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over De Bruycker et al (U.S. Patent Number 6,272,219).

Re Claim 6, remote device includes a telephone and ADSL modem. The ADSL Modem can be powered with an external plug. One skilled in the art would have been motivated with use the phantom power source of the CO to operate the telephone in case of power outage at the premise. In so doing, the CO (central module) can identify the existence and location of the telephone without the power supply to the modem

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itself. Therefore, it would have been obvious to one ordinary skilled to skilled to connect a telephone that operates over the power supply of the CO for reliability.

7. Claims 7, 8, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Bruycker et al (U.S. Patent Number 6,272,219) in view of Williams et al (U.S. Patent Number 5,216,704).

Re Claims 7 and 12, De Bruycker et al fails to explicitly teach a power modulator and a power demodulator. However, Williams et al teaches in fig. 1B whereby an ISDN modem system incorporates a phantom power feed from a telephone system CO. In particular, fig. 2B teaches a power source 52 (a power modulator) and a power sink 54 (a power demodulator) over the local telephone loop. One skilled in the art would have been motivated to power the local modem in De Bruycker et al with power source of the CO for reliability. Therefore, it would have been obvious to one ordinary skilled to combine by references.

Re Claim 8, refer to Claim 7, wherein the CO detects power failure at the remote station (See abstract).


### ***Conclusion***


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Soon D. Hyun whose telephone number is 571-272-3121. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi H. Pham can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
S. Hyun  
7/31/2007

  
CHI PHAM  
SUPERVISORY PATENT EXAMINER  
8/3/07